

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2006

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

WRIT PETITION No.11984 of 2001
and
WPMP.No.32613 of 2004

N.Mariappan ... Petitioner

Vs.

The Corporation of Chennai,
rep.by its Commissioner,
Ripon Building,
Chennai 600 003 .. Respondent

* * *

The Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus as stated therein.

* * *

For petitioner : M/s.Sudha Ramalingam

For respondent : Mr.C.Ravichandran

* * *

O R D E R

The Writ Petition has been filed praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records and quash the order No.Po.Thu.NA.KA.E-12/19623/99, dated 4.6.1999, issued by the respondent and consequently direct the respondent to appoint the petitioner on compassionate basis to any post in any section commensurate with the petitioner's qualification.

2. Heard the learned counsel for the petitioner as well as for the respondent.

3. It is the case of the petitioner that his father late K.Nagappan was employed as a R.C.Driver in H Depot, Zone VIII, under the respondent Corporation and he had died in harness on 20.08.1992. The petitioner's mother had predeceased his father on 25.12.1989. The petitioner had made a representation to the respondent on 19.03.1999, for appointment on compassionate grounds, along with all the relevant records. The respondent had sent a letter to the Tahsildar, Mylapore-Triplicane Taluk and sought for the 'Family Circumstances Certificate'. In spite of receiving the same, the respondent had sent the impugned order No.Po.Thu.NA.KA.E-12/19623/99, dated 4.6.1999, rejecting the petitioner's name for compassionate appointment on the ground of lapse of three years which was the limitation period.

4. It is further stated that the petitioner and his elder sister one Kattammal were minors at the time of the death of their parents and therefore, they could not apply for appointment on compassionate grounds immediately following the death of their parents. It is the further case of the petitioner that the Tahsildar Mylapore-Triplicane Taluk had clearly stated that no one from the petitioner's family was working under the Central or the State Government and that they were living under penury. Infact, it was not uncommon for the respondent Corporation to keep the quota reserved for compassionate appointment vacant for several years after the death of its employees to accommodate the children of the deceased employees and to provide them with jobs on they attaining majority.

5. The learned counsel appearing for the petitioner submits that at the time of the death of the petitioner's father Mr. K.Nagappan on 20.08.1992, there was no limitation for an application to be made by the members of the deceased persons family for compassionate appointment. In G.O.Ms.No.560, Labour and Employment, dated 03.08.1977, para graph (1) (b) is as follows :-

" In future requests for appointment of dependants of the Government Servant who died prior to 15th February 1972, can be considered favourably and proposals sent to Government in the following type of cases.

At the time of consideration of his dependants case for appointment, the Government Servant presumptive date of superannuation (i.e.had he lived) should not have been reached. In other words, the grant of the concession would be considered only upto the presumptive date of superannuation of the Government Servant. For example, if a Government Servant died in 1965 and the date of his superannuation would have been 1.10.1981 if he were alive, his dependant can apply for a post on the date prior to 1.10.1981 only"

6. However, by letter.No.43242/NI/81-9, dated 01st June,1982, issued by the Labour and Employment Department, , the Government of Tamil Nadu had issued a clarification stating that,

" The dependants of Government Servants who die in harness can be considered for appointment on compassionate grounds irrespective of the presumptive date of superannuation of deceased Government Servant"

Accordingly, It is clear that there was no hindrance for the petitioner to request for appointment on compassionate grounds. However, in the impugned order of the respondent No.Po.Thu.NA.KA.E-12/19623/99, dated 4.6.1999, It is stated that the petitioner's request for appointment on compassionate grounds cannot be accepted, since the elder sister, though she was qualified for appointment on compassionate grounds, had not applied and that there has been a delay of six years in making the application by the petitioner . Further, it has been stated by the first respondent that there was nothing to show, that the family was under an economic crisis to accept the petitioner's request for appointment on compassionate grounds.

7. The learned counsel appearing for the petitioner contends that the grounds stated in the impugned order of the respondent, dated 04.06.1999, are untenable and cannot be sustained in the eye of law.

8. On the other hand, the learned counsel for the respondent states that the petitioner is claiming appointment on compassionate grounds belatedly and that there is no vested right in the petitioner to request for such an appointment. Appointment on compassionate grounds is meant only to meet the emergent crisis arising on the sudden death of the earning member on behalf of the family. He further states that in G.O.Ms.No.120, Labour and Employment Department, dated 26.06.1995, it is specifically mentioned that the application for appointment on compassionate grounds should be made within three years of the death of the Government Servant. Whereas the petitioner has made a representation on 19.09.1999, seeking for an appointment on compassionate grounds on the death of his father late K.Nagappan, who had died on 20.08.1992, and at the time of the death of the petitioner's father, his elder sister one Kattammal was qualified to apply for such an appointment, but she had chosen not to do so. Therefore, the respondent had rightly rejected the request of the petitioner for appointment on compassionate grounds by his order, dated 04.06.1999.

9. The learned counsel for the petitioner states that the condition found in G.O.Ms.No.120 Labour and Employment Department, dated 26.06.1995, that the application for appointment on compassionate grounds should be made within three years of the death of the Government Servant cannot apply to the petitioner, since it can only be prospective in operation and would not apply to the case of the Government Servant who had died in harness prior to the date of the Government order. Further, modifications issued by the Government of Tamil Nadu in G.O.Ms.No.120 Labour and Employment, dated 26.06.1995, reads as follows :-

" In this connection, the District Collector, Tirunelveli Kattabommon District has sought for clarifications whether the time limit of three years period specified in the Government Order is applicable to the dependants of the Government servants who died prior to the date of issue of the Government order. In this connection, it is clarified Government order first cited is applicable only to the dependants of the Government servants those who died while in service on or after 26.06.1995, and the above orders are not applicable to the past cases."

10. In such circumstances, it cannot be said that the request of the petitioner for appointment on compassionate grounds is belated, as being made beyond three years period provided in G.O.Ms.No.120, Labour and Employment, dated 26.06.1995. It is further stated that, in fact, the elder sister of the petitioner one Kattammal had made a request for appointment on compassionate grounds on the death of the petitioner's mother Kuppammal on 25.12.1989. However, the respondent had not passed any orders on the said request till date either rejecting or accepting the request. Therefore, the reasons stated by the respondent in the impugned order, dated 04.06.1999, cannot be sustained.

11. The learned counsel for the petitioner further states that the petitioner and his elder sister both are still living in penury and having lost their parents at a very young age. The technical plea raised by the respondent in support of the the impugned order, dated 04.06.1999, rejecting the request of the petitioner for appointment on compassionate grounds is devoid of merits and it is therefore rejected by this court.

12. Even though appointment on compassionate grounds is an exception to the general rule that appointment shall be based only on merit and based on the qualifications prescribed to be eligible for such appointment. It is provided with an object to enable the family to get over the sudden financial crisis arising due to the

death of an earning family member, but not as a source of recruitment, it is seen in the facts and circumstances of the present case that all the conditions that prevailed at the time of the death of the petitioner's parents continued till the date of the application made by the petitioner and even thereafter. Further, the arguments adduced in support of the impugned order of the respondent, dated 04.06.1999, citing G.O.Ms.No.120 Labour and Employment Department, dated 26.06.1995, cannot be accepted in view of the fact that the state government order contemplates of a situation of the death of the Government Servant arising on or after the date of the government order viz., 26.06.1995. This position has been made very clear by the order issued by the Government of Tamil Nadu, clarifying that the said order was not applicable to the past cases. It is also to be noted that on the date of death of the petitioner's father, who was employed in the respondent corporation, there were no restrictions with regard to the period to make the request for appointment on compassionate grounds.

13. In most of the decided cases, with regard to compassionate appointment, it is seen that a specific period has been fixed either by the rules, standing orders, or regulations applicable to the concerned service. However, in the present case, there were no such restrictions shown to be prevailing at the time of the death of the deceased employee.

14. In these circumstances, this court is of the considered view that the impugned order of the respondent, dated 04.06.1999, cannot be sustained in the eye of law. Therefore, the impugned order of the respondent No.Po.Thu.NA.KA.E-12/19623/99, dated 4.6.1999, is set aside and the respondent is directed to consider the request of the petitioner for appointment on compassionate grounds commensurate with his qualifications and pass appropriate orders within 12 weeks from the date of receipt of a copy of this order.

With the above directions, the writ petition is allowed. Consequently, the connected WPMP is closed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

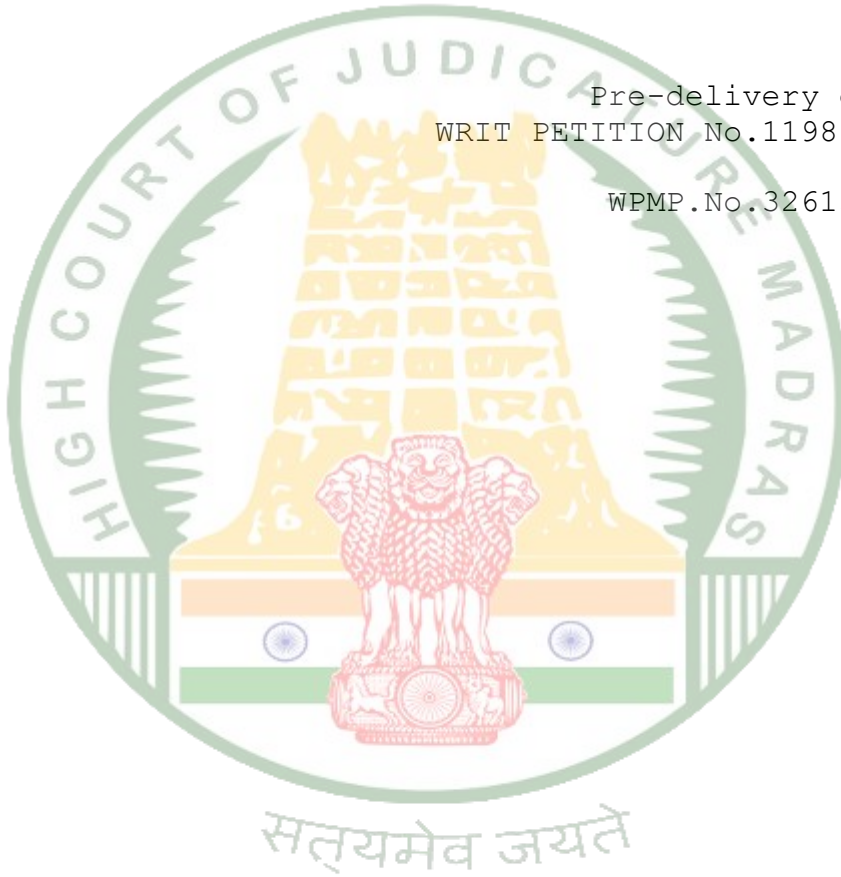
To

The Commissioner,
The Corporation of Chennai,
Ripon Buildings,
Chennai 600 003

+ 1 cc to Mr.C.Ramachandran, Advocate SR No.25340

AK(CO)
SR/21.6.2006

Pre-delivery order in
WRIT PETITION No.11984 of 2001
and
WPMP.No.32613 of 2004



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